

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>DAVID PHILLIPS and DIANE</b>	)	
<b>BROWNING. , Individually and on</b>	)	
<b>behalf of a class of persons,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>CIVIL ACTION NO:</b>
<b>v.</b>	)	<b>2:16-cv-00837-JEO</b>
	)	
<b>HOBBY LOBBY STORES, INC.,</b>	)	<b>"CLASS ACTION"</b>
	)	
<b>Defendant.</b>	)	

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**ANSWER OF HOBBY LOBBY STORES, INC. TO  
THIRD AMENDED CLASS ACTION COMPLAINT**

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Defendant, Hobby Lobby Stores, Inc. ("Hobby Lobby"), by and through its undersigned attorney, hereby submits its answer to the Third Amended Complaint.

**FIRST DEFENSE**

For its answer to the specifically-enumerated paragraphs of the Third Amended Complaint, defendant Hobby Lobby states as follows:

**I. JURISDICTION AND VENUE**

1. The allegations of paragraph 1 with regard to jurisdiction under 28 U.S.C. § 1332 constitute a legal conclusion to which no response is required. Hobby Lobby denies all remaining allegations in paragraph 1, and specifically

denies that this action should proceed as a class action, and that plaintiffs are entitled to any relief or damages whatsoever.

2. Admitted with respect to Plaintiffs Phillips and Browning. Hobby Lobby denies that this is an appropriate or convenient venue for the claims of Plaintiff Carrara or the claims of the Illinois class.

## II. PARTIES

3. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 regarding the age and residency of plaintiff David Phillips, and must therefore deny same and demand strict proof thereof. Hobby Lobby denies all remaining allegations in paragraph 3.

4. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 regarding plaintiff Diane Browning, and must deny same and demand strict proof thereof. Hobby Lobby denies all remaining allegations in paragraph 4.

5. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 regarding the age and residency of plaintiff Mary E. Carrara, and must therefore deny same and demand strict proof thereof. Hobby Lobby denies all remaining allegations in paragraph 5.

6. Admitted.

### **III. NATURE OF CLASS ACTIONS**

7. Admitted.

8. The allegations of paragraph 8 with regard to common law and state consumer protection laws in Alabama and Illinois constitute legal conclusions to which no response is required. Hobby Lobby denies all remaining allegations in paragraph 8, and specifically denies that this action should be maintained as a class action and that plaintiffs are entitled to any relief or damages whatsoever.

9. Denied.

10. Denied.

11. Denied.

12. Hobby Lobby admits that the complaint seeks relief for plaintiffs and other putative class members, but Hobby Lobby denies all remaining allegations of paragraph 12.

### **IV. FACTUAL ALLEGATIONS**

#### **A. The Facts Relating to Diane Browning's Hobby Lobby Purchases**

13. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13, and must therefore deny same and demand strict proof thereof.

14. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 14, and must therefore deny same and demand strict proof thereof.

15. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15, and must therefore deny same and demand strict proof thereof.

16. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16, and must therefore deny same and demand strict proof thereof.

17. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17, and must therefore deny same and demand strict proof thereof.

18. Denied.

19. Denied.

**B. The Facts Relating to Mr. Phillips' Purchase**

20. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 20, and must therefore deny same and demand strict proof thereof.

21. Denied.

22. Hobby Lobby admits that Mr. Phillips was given a 40% discount off of the marked price of \$130.00 and paid \$78.00 for the museum glass. Hobby Lobby denies the remaining allegations of paragraph 22.

**C. The Facts Relating to Mrs. Carrara's Purchase**

23. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 23, and must therefore deny same and demand strict proof thereof.

24. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 24, and must therefore deny same and demand strict proof thereof.

25. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 25, and must therefore deny same and demand strict proof thereof.

26. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26, and must therefore deny same and demand strict proof thereof.

**D. The Scope of Hobby Lobby's Scheme**

27. Hobby Lobby denies that its advertising and sales practices are misleading, and it further denies the remaining allegations in paragraph 27.

28. Hobby Lobby admits it operates at more than 600 locations throughout the country. Hobby Lobby denies the remaining allegations in paragraph 28.

29. Denied.

30. Denied.

31. Denied.

**CLASS ALLEGATIONS**

32. Defendant Hobby Lobby admits that plaintiffs purport to bring this case as a class action, but Hobby Lobby denies that this case can properly be maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 32.

33. Defendant Hobby Lobby admits that plaintiffs purport to bring this case as a class action on behalf of certain defined classes, but Hobby Lobby denies that this case can properly be maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 33.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Defendant Hobby Lobby admits that while plaintiffs may not themselves anticipate that there will be difficulties in managing this case as a class action, there will in fact arise manageability concerns that will preclude this case

from being maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 39.

**COUNT I**

**(Class Claim for Breach of Contract)**

40. Defendant Hobby Lobby responds to the allegations in paragraph 39 as fully set forth above.

41. Defendant Hobby Lobby admits that plaintiffs purport to bring this case as a class action, but Hobby Lobby denies that this case can properly be maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 41.

42. Denied.

43. Denied.

44. Denied. Defendant Hobby Lobby denies that plaintiffs are entitled to any judgment or relief whatsoever.

**COUNT II**

**(Class Claim Under the Alabama Deceptive Trade Practices Act)**

45. Defendant Hobby Lobby responds to the allegations in paragraph 45 as fully set forth above. The allegations of paragraph 45 with regard to Mrs. Carrara's transactions constitute legal conclusions to which no response is required.

46. Defendant Hobby Lobby admits that plaintiffs purport to bring this case as a class action, but Hobby Lobby denies that this case can properly be

maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 46.

47. The Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1 (1975) speaks for itself. To the extent the allegations in paragraph 47 accurately reflect the Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1 (1975), they are admitted. Otherwise, they are denied.

48. Alabama Code § 8-19-5(11) (1975) speaks for itself. To the extent the allegations in paragraph 48 accurately reflect Alabama Code § 8-19-5(11) (1975), they are admitted. Otherwise, they are denied.

49. The Alabama Deceptive Trade Practices Act speaks for itself. To the extent the allegations in paragraph 49 accurately reflect the Alabama Deceptive Trade Practices Act, they are admitted. Otherwise, they are denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied. Defendant Hobby Lobby denies that plaintiffs are entitled to any judgment or relief whatsoever.



**COUNT III**

**(Class Claim Under the Illinois Consumer Fraud and  
Deceptive Business Practices Act)**

54. Defendant Hobby Lobby responds to the allegations in paragraph 54 as fully set forth above

55. Defendant Hobby Lobby admits that plaintiff Carrara purports to bring this case as a class action, but Hobby Lobby denies that this case can properly be maintained as a class action. The Illinois Consumer Fraud Act and Deceptive Business Practices Act, and the Uniform Deceptive Trade Practices Act speak for themselves. To the extent the allegations in paragraph 55 of the complaint accurately reflect the Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505), and the Uniform Deceptive Trade Practice Act (Act 510), they are admitted. Otherwise, they are denied.

56. The Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505) speaks for itself. To the extent the allegations in paragraph 56 of the complaint accurately reflect the Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505), they are admitted. Otherwise, they are denied.

57. The Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505) speaks for itself. To the extent the allegations in paragraph 56 of the complaint accurately reflect the Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505), they are admitted. Otherwise, they are denied

58. The Illinois Uniform Deceptive Trade Practice Act (Act 510) speaks for itself. To the extent the allegations in paragraph 58 accurately reflect the Illinois Uniform Deceptive Trade Practice Act (Act 510), they are admitted. Otherwise, they are denied.

59. Denied.

60. The Illinois Consumer Fraud Act and Deceptive Business Practices Act, and the Uniform Deceptive Trade Practices Act speak for themselves. To the extent the allegations in paragraph 60 of the complaint accurately reflect the Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505), and the Uniform Deceptive Trade Practice Act (Act 510), they are admitted. Otherwise, they are denied.

61. The Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505) speaks for itself. To the extent the allegations in paragraph 61 of the complaint accurately reflect the Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505), they are admitted. Otherwise, they are denied.

62. The Illinois Consumer Fraud Act and Deceptive Business Practices Act, and the Uniform Deceptive Trade Practices Act speak for themselves. To the extent the allegations in paragraph 62 of the complaint accurately reflect the Illinois Consumer Fraud Act and Deceptive Business Practices Act (Act 505), and

the Uniform Deceptive Trade Practice Act (Act 510), they are admitted. Otherwise, they are denied.

63. Denied.

64. Defendant Hobby Lobby denies that plaintiff Carrara is entitled to any judgment or relief whatsoever.

65. Defendant Hobby Lobby denies that plaintiffs are entitled to any judgment or relief whatsoever.

### **SECOND DEFENSE**

The Third Amended Complaint, and each count therein, fails to state a claim upon which relief may be granted.

### **THIRD DEFENSE**

Plaintiffs have not suffered a discrete and particularized injury needed to bestow Article III or statutory standing upon them.

### **FOURTH DEFENSE**

This district is not a proper or convenient venue for the claims of Mary Carrara or the claims of the Illinois class.

### **FIFTH DEFENSE**

Plaintiffs' claims are barred in whole or in part by the doctrines of laches, waiver, estoppel and/or abandonment.

**SIXTH DEFENSE**

Defendant's actions were performed in good faith conformity with applicable rules, regulations, and statutory interpretations.

**SEVENTH DEFENSE**

Plaintiffs' claims are barred because the alleged violation (if any) was not willful and because plaintiffs cannot establish any actual damages.

**EIGHTH DEFENSE**

Plaintiffs have failed to mitigate any damages they may have suffered and failed to take reasonable precautions to avoid those damages.

**NINTH DEFENSE**

The claims of the Plaintiffs and the class are barred if they used the 40% off discount coupons on other items that were not already discounted and therefore received the full value of the coupons.

**TENTH DEFENSE**

Plaintiffs failed to comply with all applicable conditions precedent to assert some or all of the claims in the Complaint.

**ELEVENTH DEFENSE**

Plaintiffs Phillips and Browning have not complied with statutory prerequisites to bringing suit under the Alabama Deceptive Trade Practices Act, including without limitation Ala. Code § 5-19-10 (e).

**TWELFTH DEFENSE**

Plaintiffs are not adequate class representatives, they do not have typical claims, and their claims are subject to several unique defenses.

**THIRTEENTH DEFENSE**

Individual issues permeating plaintiffs' claims, as well as those of the putative class, predominate over any alleged common issues.

**FOURTEENTH DEFENSE**

Plaintiffs Phillips and Browning are barred from bringing class claims under the Alabama Deceptive Trade Practices Act by virtue of Ala. Code § 5-19-10 (f), which only allows the Alabama Attorney General or a district attorney to seek class remedies.

**FIFTEENTH DEFENSE**

The Complaint fails to satisfy the requirements for class action treatment as prescribed by Federal Rule of Civil Procedure 23.

**SIXTEENTH DEFENSE**

This action cannot be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure because (i) the questions of law and fact are not common to the class, the legal issues differ from class member to class member, and the factual issues will differ depending on a number of different facts applicable to the various putative class members; (ii) the claims of the representative parties are not typical of the claims or defenses of the class; and (iii)

the Plaintiffs will not fairly and adequately protect the interests of the class.

### **SEVENTEENTH DEFENSE**

A class cannot be certified under the allegations of Plaintiff's Complaint because to do so is violative of the United States Constitution's provisions regarding due process.

### **EIGHTEENTH DEFENSE**

Defendant denies each and every material allegation of the Complaint as they relate to the request for class certification, and objects to any such class action certification on the following grounds:

- a. Plaintiff has failed to join indispensable parties;
- b. The Complaint fails to adequately define any class of persons who could properly maintain this action as a class action;
- c. The purported class representatives have not sustained their burden of establishing standing;
- d. Defendant's time-based defenses, such as statutes of limitations and laches, mandate the denial of class certification;
- e. Individualized determinations for each class member of controlling state substantive law and the applicability of different state substantive laws to claims by purported class members preclude class certification;
- f. The class as defined is not ascertainable because Hobby Lobby does

not ordinarily maintain customer information (such as names and addresses) on a routine basis;

g. A Rule 23(b)(3) class is inappropriate because individualized issues predominate over common questions and because of manageability issues;

h. Lack of commonality of questions of law;

i. Lack of commonality of questions of fact;

j. Lack of typicality;

k. Lack of adequacy of representation;

l. Lack of requirements for certification under Rule 23(b)(2) of the Federal Rules of Civil Procedure;

m. Lack of requirements for certification under Rule 23(b)(3) of the Federal Rules of Civil Procedure;

n. Individual issues predominate over common issues;

o. A class action is not superior to other available methods for the fair and efficient adjudication of this controversy;

p. There are difficulties that are likely to be encountered in the management of a class action that cannot be resolved in a manner that will allow a class to be certified.

**NINETEENTH DEFENSE**

The putative classes defined in the Complaint are not ascertainable because the class definitions will entail countless individual inquiries such that it is not administratively feasible to determine class membership.

**TWENTIETH DEFENSE**

To the extent Plaintiffs assert a claim under the Alabama Deceptive Trade Practices Act, that claim is barred to the extent that any of the events took place outside Alabama without impact on Alabama residents.

**TWENTY-FIRST DEFENSE**

To the extent Plaintiffs assert a claim under the Illinois Consumer Fraud Act and Deceptive Business Practices Act, that claim is barred to the extent that any of the events took place outside Illinois without impact on Illinois residents.

**TWENTY-SECOND DEFENSE**

To the extent Plaintiffs assert a claim under the Illinois Uniform Deceptive Trade Practices Act, that claim is barred to the extent that any of the events took place outside Illinois without impact on Illinois residents.

**TWENTY-THIRD DEFENSE**

Defendant complied with all the requirements of federal and state law regarding any transactions with Plaintiffs.

**TWENTY-FOURTH DEFENSE**

Plaintiffs lack standing or capacity to assert their claims, in whole or in part.



**TWENTY-FIFTH DEFENSE**

Plaintiffs' claims for equitable relief are barred, in whole or in part, because they have a plain, common, adequate, and speedy remedy at law.

**TWENTY-SIXTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because the alleged conduct of Hobby Lobby was lawful and undertaken in good faith.

**TWENTY-SEVENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because plaintiffs would be unjustly enriched if they were to prevail on any of the causes of action.

**TWENTY-EIGHTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, to the extent plaintiffs seek cumulative remedies.

**TWENTY-NINTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because plaintiffs did not and could not have reasonably or justifiably relied on the alleged misrepresentations or omissions asserted in the Complaint.

**THIRTIETH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because plaintiffs expressly and/or impliedly consented to and/or had knowledge of, all activities or conditions alleged in the Complaint to have caused them harm.

**THIRTY-FIRST DEFENSE**

Plaintiffs' claims are barred by the doctrine of acceptance, acquiescence, and ratification.

**THIRTY-SECOND DEFENSE**

Plaintiffs' breach of contract claim must fail as a matter of law because Defendant's advertisements do not constitute an offer.

**THIRTY-THIRD DEFENSE**

Plaintiffs' claims are barred because, with full or sufficient knowledge of the purported legal violations, they proceeded with the transactions and voluntarily paid for and then used the items they purchased.

**THIRTY-FOURTH DEFENSE**

Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

**THIRTY-FIFTH DEFENSE**

Plaintiffs' claims are barred because Plaintiffs have already received the benefit of their bargain, and neither law nor equity may be invoked to obtain a windfall.

**RESERVATION OF DEFENSES**

This defendant specifically reserves all separate or affirmative defenses that it may have against the putative class members. It also expressly reserves the right to raise such additional affirmative defenses as may be established through

discovery in this case. Any specific averments in the complaint that have not been expressly admitted or denied above are hereby denied.

s/ Robert H. Rutherford  
Robert H. Rutherford (RUT002)

Attorney for Defendant Hobby Lobby  
Stores, Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer of Hobby Lobby Stores, Inc. to the Third Amended Complaint has been electronically filed with the Clerk of the Court using the CM/ECF system on the following CM/ECF participants, on this 23rd day of November, 2016.

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s/ Robert H. Rutherford  
OF COUNSEL